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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH RICHARD ROWELL,

Defendant.

NO: CR-13-6070-EFS

GOVERNMENT'S SENTENCING
MEMORANDUM

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and Alexander C. Ekstrom, Assistant United States Attorney for the Eastern District of Washington, hereby submits the following sentencing memorandum:

I. BASE OFFENSE LEVEL AND ENHANCEMENTS

Federal Probation calculates the Defendant's Base Offense Level as 28, pursuant to U.S.S.G. § 2D1.1(c)(6). Federal Probation indicates that two levels are added because the Defendant possessed a firearm during the "course of relevant conduct," here drug dealing that continued for six months after the charged offense, pursuant to U.S.S.G. § 2D1.1(b)(1). Federal Probation indicates that acceptance of responsibility applies. Federal Probation calculates the Total Offense Level as 27, the Criminal History Category as IV, and the Guideline Sentencing Range as 130 to 162 months. Pursuant to Department of Justice Policy, the Government recommends an additional two level reduction in the offense level, resulting in an offense level of 25, a Criminal History Category of IV, and a Guideline Sentencing Range of 110-137 months. The Government otherwise agrees with the calculations of United States Government's Sentencing Memorandum

1 Probation, and stands by its recommendation pursuant to the plea agreement, of a
2 sentence of 120 months.

3 II. DEPARTURES

4 This matter was resolved with a Plea Agreement, allowing both parties to argue
5 aggravating or mitigating factors with respect to the correct calculation of the
6 Sentencing Guidelines. The Government concurs with the position of United States
7 Probation, that an agreement under Rule 11(c)(1)(C) may support a departure, (ECF
8 No. 48, pg. 35, paragraphs 248-49) however, based on the Government's motion for
an additional two-point reduction, a departure is not necessary.

9 III. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)

10 In sentencing the defendant, this Court is no longer bound by the Guidelines as
11 mandatory, but should treat them as advisory, and must still consider, consult, and
12 take into account the Guidelines when sentencing the defendant. *United States v.*
13 *Booker*, 125 S.Ct. 738, 767 (2005). The Court must also consider the factors set forth
14 in 18 U.S.C. § 3553(a). The Court is directed to impose a sentence sufficient but not
15 greater than necessary to comply with the purposes of punishment for the offenses of
conviction. 18 U.S.C. § 3553(a)(2)(A).

16 1. The nature and circumstances of the offense and the history and 17 characteristics of the defendant.

18 The Defendant has an atrocious criminal history. (ECF No. 48, pgs. 11-23,
19 paragraphs 54-168). These convictions include weapons and drug offenses, and an
20 unlawful imprisonment conviction that, based on the factual recitation, could arguable
21 have been charged as multiple more serious offenses. *Id.*

22 This is, however, the Defendant's first federal prosecution. He has
23 expeditiously entered a plea of guilty and accepted responsibility for his actions.
24 Given this fact, a sentence of 120 months is appropriate.

25 2. The need for the sentence imposed to reflect the seriousness of the 26 offense, promote respect for the law, and to provide just punishment.

27 Distribution of any controlled substance is a serious offense. The direct and
28 collateral effects of drug dealing, in particular where the substance dealt is
Government's Sentencing Memorandum

1 methamphetamine, needs no further comment. The Defendant's actions show a
2 complete lack of respect for the law. His offense behavior and past offenses show a
3 disturbing propensity toward violence. A sentence of 120 months is warranted.

4 3. The need for the sentence imposed to afford adequate deterrence to
5 criminal conduct.

6 The sentence should convey to the Defendant the seriousness of the offense and
7 provide warning of the escalating sanctions that will occur if he engages in similar
8 behavior after being released from incarceration. While a prior sentence of 33 months
9 was ineffective, one can reasonably hope that this sentence, combined with supervised
10 release, and the knowledge that similar subsequent offenses carry with them the
11 potential for even greater imprisonment, will deter this defendant.

12 4. The need for the sentence imposed to protect the public from further
13 crimes of the defendant.

14 The defendant poses a risk to public safety: his offense has collateral
15 consequences in the community well past the simple act of distribution. The need for
16 public safety dictates a significant sentence, and a sentence of 120 months will
17 sufficiently protect the public.

18 5. The need for the sentence imposed to provide the Defendant with needed
19 educational or vocational training, medical care, or other correctional
20 treatment in the most effective manner.

21 The Defendant has admitted to a substance abuse problem with
22 methamphetamine. He will have resources to address this problem while incarcerated
23 if he decides to take advantage of the opportunity. These programs are best suited for
24 the Defendant in a secure facility, as the Defendant poses a clear and present risk to
25 the public if out of custody and left to address the problem on his own while in the
26 community.

27 6. The kinds of sentences available.

28 The defendant is subject to a sentence involving a term of imprisonment, and no
other options are available.

7. The kind of sentence contemplated by the Sentencing Guidelines.

1 The Sentencing Guidelines contemplates a term of imprisonment of 110 to 137
2 months, by the Government's calculation.

3 8. Any pertinent policy statements issued by the Sentencing Commission.

4 There are no pertinent policy statements in this case.

5 9. The need to avoid unwarranted sentence disparity among defendants with
6 similar records who have been found guilty of similar conduct.

7 A sentence of 120 months will avoid any unwarranted disparity among
8 similarly situated defendants, when considering the history and characteristics of the
9 Defendant, balancing the above listed factors.

10 IV. GOVERNMENT'S SENTENCING RECOMMENDATION

11 For the reasons set forth, the Government requests the Court impose a sentence
12 of 120 months.

13 Respectfully submitted this 25th day of April, 2014

14 MICHAEL C. ORMSBY
15 United States Attorney

16 s/Alexander C. Ekstrom
17 ALEXANDER C. EKSTROM
18 Assistant United States Attorney
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1 I hereby certify that on April 25, 2014, I electronically filed the foregoing with
2 the Clerk of the Court using the CM/ECF System which will send notification of such
3 filing to the following: Rick Lee Hoffman.

4
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